IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO (MVA) No.388 of 2003.

Reserved on:24.05.2007.

Decided on: *June 28, 2007*

Sandesh Kumari & Others **…..Appellants.**

VERSUS

Rajesh Kuamr & Another. **…..Respondents.**

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] Yes

For the Appellants:	**Mr.Prashant Kanwar vice Mr.Sandeep Sharma, Advocate.**
For the Respondents:	**Mr.Lovneesh Kanwar, Advocate for respondent No.1**
	Mr.Sanjeev Sood, vice Mr.K.D.Sood, Advocate for respondent No.2.

Kuldip Singh, Judge

The claimants / petitioners are in appeal for enhancement of compensation against award dated 8.1.2003 passed by M.A.C.T., Bilaspur in MAC Petition No.5 of 2001 awarding Rs.2,88,000/- compensation against respondents No.1 and 2 with a direction to respondent No.2 to deposit compensation Rs.2,88,000/- within 45 days from the date of award failing which interest at the rate of 9% per annum shall be payable from the date of award till realization. The parties are referred herein in the same manner as in the impugned award.

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[1] *Whether the reporters of the local papers may be allowed to see the Judgment ? Yes*

2. The brief facts, as alleged in the claim petition, are that Rakesh Kumar on 1.8.2000 boarded truck No.HIB-4164 for buying goods from Mandi. At Place *Nagchallah* truck No.HP-33-4397 was noticed coming from the opposite side. Truck No.HP-33-4397 struck against truck No.HIB-4164 and in the accident Rakesh Kumar suffered injuries and succumbed to injuries. The respondent no.1 was the owner of truck No.HP-33-4397 at the time of accident and the accident took place due to rash and negligent driving on the part of driver of truck No.HP-33-4397. The deceased Rakesh Kumar was 30 years of age and had been getting Rs.6000/- per month as driver in private sector. The petitioners are widow, children and mother of the deceased who were dependants on the deceased. The petitioners claimed Rs.12 lacs compensation.

3. The respondents No.1 filed reply and admitted ownership of truck No.HP-33-4397, he also admitted the accident and death of Rakesh Kumar in the accident. He, however, alleged that accident had taken place due to rash and negligent driving of truck No.HIB-4164. The age and income of the deceased was denied for want of knowledge. He alleged that truck No.HP-33-4397 was comprehensively insured with respondent No.2 and, therefore, respondent No.2 is liable to indemnify respondent No.1.

4. The respondent No.2 contested the claim of the petitioners. The insurance of truck No.HP-33-4397 was admitted. It has been alleged that accident took place due to rash and negligent

driving of truck No.HIB-4164. The validity of the licence of driver of truck No.HP-33-4397 was denied. It has been alleged that Rakesh Kumar was a gratuitous passenger in truck No.HIB-4164. The objections of maintainability, non-joinder and mis-joinder of parties have been taken. The liability of respondent No.2 to indemnify respondent No.1 was denied.

5. The tribunal held that Rakesh Kumar had died in an accident due to rash and negligent driving on the part of the driver of truck No.HP-33-4397. The monthly income of deceased Rakesh Kumar was taken Rs.2600/- and dependency of petitioners Rs.2000/- per month. The age of deceased was taken 30 years and after applying multiplier of 12, Rs.2,88,000/- compensation has been awarded to the petitioners. Out of the compensation amount Rs.1,25,000/- was awarded to petitioner No.1 widow, Rs.1,25,000/- was ordered to be shared equally by petitioners No.2 to 4 and Rs.38,000/- was awarded to petitioner No.5. The petitioners have filed the appeal for enhancement of compensation.

6. I have heard the learned counsel or the parties and have also gone through the record.

7. The learned counsel for the petitioners has submitted that tribunal has taken monthly income of deceased Rakesh Kumar on the lower side and consequently dependency of the petitioners has been taken less and keeping in view the age of the deceased multiplier of 12 has been applied on the lower side and nothing has been awarded

towards loss of consortium, love and affection, funeral expenses etc., the interest should have been allowed from the date of filing of the petition and not in the manner as awarded by the tribunal. The respondents have supported the award.

8. The respondents have not assailed the award, therefore, findings of learned tribunal regarding negligence and quantum have become final as against the respondents. PW-1 Sandesh Kumari has deposed that her husband was earning Rs.6000/- salary per month by driving taxi and he used to pay Rs.5000/- per month to her and all of them were dependants upon him and the deceased was 30 years of age at the time of accident. She had spent Rs.30,000/- on his cremation and other religious ceremonies. She has placed nothing on record to prove the income of deceased Rakesh Kumar. PW-3 D.R. Guleria has deposed that he had engaged Rakesh Kumar as driver on taxi No.HP-02-3578 in the year 1998. He used to pay Rs.6000/- per month salary including all expenses to the deceased. He has stated that he had no record regarding the payment of salary to the deceased. The policy of truck No.HP-33-4397 is Ext.RA. This is the entire evidence regarding age and income of the deceased. The petitioners have failed to bring on record worth believing evidence so as to take income of deceased Rakesh Kumar Rs.6000/- per month. The statement of PW-3 D.R.Guleria that he engaged deceased Rakesh Kumar as driver on his taxi on Rs.6000/- per month cannot be believed in absence of corroborative evidence. He has not produced

any document on record in order to show that he was paying Rs.6000/- salary per month to deceased. In these circumstances, the tribunal has rightly taken the income of deceased Rs.2600/- per month and after excluding the expenses which Rakesh Kumar was expected to spend on himself the tribunal has rightly taken dependency of petitioners Rs.2000/- per month. The deceased was 30 years of age at the time of accident. The Supreme Court in ***The New India Assurance Company Limited Ltd. Versus Smt.Kalpana & Others [JT 2007 (2) 353]*** has applied the multiplier of 13 at the age of 33 years. In the present case, the deceased was 30 years of age, therefore, in my view, multiplier of 15 is applicable instead of 12 applied by the tribunal. Therefore, amount of compensation comes to Rs.2000 x 12 x 15 = Rs.3,60,000/-. In addition to this, the petitioners are entitled to Rs.20,000/- on account of loss of consortium and love and affection plus Rs.10,000/- on account of funeral expenses. The total compensation thus comes to Rs.3,90,000/-. The truck No.HP-33-4397 was insured with respondent No.2. The compensation of Rs.3,90,000/- is payable jointly and severally by respondents No.1 and 2 to petitioners. The compensation is apportioned as follows:-

Petitioner No.1	: Rs.2 lacs
Petitioners No.2 to 4	: Rs.50,000/- each
Petitioner No.5	: Rs.40,000/-

9. In view of the above, the appeal is allowed and the impugned award is modified. The petitioners are held entitled to

Rs.3,90,000/- along with interest at the rate of 9% per annum from the date of institution of the petition till realization / deposit of the amount. The compensation amount shall be apportioned as; petitioner No.1 Rs.2 lacs, petitioners No.2, 3 and 4- Rs.50,000/- each and petitioner No.5 – Rs.40,000/-. The compensation of Rs.3,90,000/- is payable jointly and severally by respondents No.1 and 2. Since the truck No.HP-33-4397 was insured with respondent No.2, therefore, respondent No.2 shall pay / deposit the entire amount of compensation along with interest. On the amount of compensation, the petitioners shall also be entitled to 9% interest per annum from the date of petition till realization / deposit. No costs.

(Kuldip Singh)
Judge.

June 28, 2007
(soni)